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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,914	09/25/2003	Brian B. Lentricchia	11.025011 US	9190
41696	7590	10/17/2006	EXAMINER	
VISTA IP LAW GROUP LLP 12930 Saratoga Avenue Suite D-2 Saratoga, CA 95070			HINES, JANA A	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/672,914

Applicant(s)

LENTRICHIA, BRIAN B.

Examiner

Ja-Na Hines

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: none.
Claim(s) rejected: 1-3, 6, 7, 14-20 and 22-24.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


MARK NAVARRO
PRIMARY EXAMINER

The rejection of claims 1-3, 6-7, 17, 19-20 and 22-23 under 35 U.S.C. 102(b) as being anticipated by Bruchez et al., (US Patent 6,274,323) is maintained for reasons already of record.

Applicants' argue that Bruchez et al., do not teach a filter comprising a sensor molecule attached thereto. However Bruchez et al., teach a method of detecting one or more target analytes in a sample providing a specific binding molecule (antibody) on a solid support (filter), combining the sample with the specific binding molecule to allow the formation of the specific-binding molecule and analyte, further combining the complex with a nanocrystal conjugate and detecting the presence of the complex which indicates the presence of the one or more targets in the sample. Thus contrary to applicants statements, a sensor molecule attached thereto is disclosed. Bruchez et al., teach conjugation, which is an equivalent term to attached, thus applicants' argument is not persuasive.

Applicants assert that there is no teaching of a method of passing a liquid sample transversely through a filter using a pressure-controlling apparatus. However, the specification teaches that controlling the volume of fluid or the use of specific pore sizes for the filter inherently control the pressure. Bruchez et al., inherently teach both such pressure controlling means. Furthermore, Bruchez et al., teach other pressure controlling means, therefore applicants' argument is not persuasive. Applicant has not claimed any additional pressure controlling structures which Bruchez et al., do not teach.

Applicants point to Figure 5, and discuss the competitive assay disclosed. However Bruchez et al., teach more than just Figure 5 and several other embodiments that are not related to a competitive assay. The other embodiments teach a filter molecule with an attached sensor that specifically binds to the target. The solid support (filter membrane) can be coated and immobilized with the antibody (col. 25, lines 53-60). Thus, Bruchez et al., is not limited, like applicants' urge. Thus the pressure controlling microsphere cannot pass through the filter. If a known amount of semiconductor nanocrystals are applied with the analyte sample, allowed to bind for a predetermined time and then passed through the filter, the concentration and presence of the bound target analyte is determined by measuring the level of fluorescence. Clearly, the filter enables the passing of the sample, just as required by the claims. Therefore contrary to applicants arguments Bruchez et al., teach all the limitations of the instant claims and the rejection is maintained.

The rejection of claim 18 under 35 U.S.C. 103(a) as being unpatentable over Bruchez et al., in view of Hurley et al., (US Patent 5,256,571) is maintained for reasons already of record. In response to applicant's argument that there is no suggestion to combine the references, it is the examiners position that Bruchez et al., has been discussed above. Therefore, the modification of Bruchez et al., in view of Hurley et al., requires no more than routine skill to incorporate the water-soluble alcohol into the sample, since the prior art teaches the beneficial effects of inhibiting bacterial growth that may affect the sterility of the sample due to preservation. Moreover, one of ordinary skill in the art would have a reasonable expectation of success, since the prior art teaches that the solution can be used with a wide variety of cell types and allows the cell samples to maintain their integrity and be further analyzed without any interference from the storage and preservation. Therefore the rejection is maintained contrary to applicants' arguments.